

Senate Engrossed House Bill

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

**FILED**  
**MICHELE REAGAN**  
**SECRETARY OF STATE**

CHAPTER 201

# **HOUSE BILL 2553**

AN ACT

AMENDING SECTION 20-2402, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 14, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 20-2414; RELATING TO RISK RETENTION GROUPS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-2402, Arizona Revised Statutes, is amended to  
3 read:

4 20-2402. Risk retention groups chartered and licensed in this  
5 state; definitions

6 A. A risk retention group, pursuant to this title, shall be chartered  
7 and licensed to write only liability insurance pursuant to this chapter and,  
8 except as provided in this chapter, must comply with this title with respect  
9 to insurers ~~which~~ THAT are chartered and licensed in this state and with  
10 section 20-2403. Before it may offer insurance in any state, each risk  
11 retention group shall also submit for approval to the director OF THE  
12 DEPARTMENT OF INSURANCE a plan of operation or a feasibility study and  
13 revisions of the plan or study if the group intends to offer any additional  
14 lines of liability insurance. The group shall not offer any additional kinds  
15 of liability insurance in this state or in any other state until a revision  
16 of the plan or study is approved by the director OF THE DEPARTMENT OF  
17 INSURANCE.

18 B. Immediately on receipt of an application for a charter, this state  
19 shall provide summary information concerning the filing to the national  
20 association of insurance commissioners, including the name of the risk  
21 retention group, the identity of the initial members of the group, the  
22 identity of those individuals who organized the group or who will provide  
23 administrative services or otherwise influence or control the activities of  
24 the group, the amount and nature of initial capitalization, the coverages to  
25 be afforded and the states in which the group intends to operate.

26 C. A RISK RETENTION GROUP THAT IS LICENSED IN THIS STATE SHALL COMPLY  
27 WITH ALL OF THE FOLLOWING:

28 1. THE BOARD OF DIRECTORS OF THE RISK RETENTION GROUP SHALL HAVE A  
29 MAJORITY OF INDEPENDENT BOARD DIRECTORS. IF THE RISK RETENTION GROUP IS A  
30 RECIPROCAL RISK RETENTION GROUP, THE ATTORNEY-IN-FACT SHALL BE REQUIRED TO  
31 ADHERE TO THE SAME STANDARDS REGARDING INDEPENDENCE OF OPERATION AND  
32 GOVERNANCE AS IMPOSED ON THE RISK RETENTION GROUP'S BOARD OF DIRECTORS OR  
33 SUBSCRIBERS' ADVISORY COMMITTEE, OR BOTH, UNDER THESE STANDARDS, AND, TO THE  
34 EXTENT PERMISSIBLE UNDER THIS STATE'S LAWS, SERVICE PROVIDERS OF A RECIPROCAL  
35 RISK RETENTION GROUP SHALL CONTRACT WITH THE RISK RETENTION GROUP AND NOT THE  
36 ATTORNEY-IN-FACT.

37 2. A BOARD DIRECTOR DOES NOT QUALIFY AS INDEPENDENT UNLESS THE BOARD  
38 OF DIRECTORS AFFIRMATIVELY DETERMINES THAT THE BOARD DIRECTOR HAS NO MATERIAL  
39 RELATIONSHIP WITH THE RISK RETENTION GROUP. EACH RISK RETENTION GROUP SHALL  
40 DISCLOSE THESE DETERMINATIONS TO ITS DOMESTIC REGULATOR, AT LEAST ANNUALLY.  
41 ANY PERSON THAT IS A DIRECT OR INDIRECT OWNER OF OR SUBSCRIBER IN THE RISK  
42 RETENTION GROUP OR IS AN OFFICER, BOARD DIRECTOR OR EMPLOYEE, OR ALL THREE,  
43 OF AN OWNER AND INSURED, AS CONTEMPLATED BY 15 UNITED STATES CODE SECTION  
44 3901(a)(4)(E)(ii), IS CONSIDERED TO BE INDEPENDENT, UNLESS SOME OTHER

1 POSITION OF THAT OFFICER, BOARD DIRECTOR OR EMPLOYEE CONSTITUTES A MATERIAL  
2 RELATIONSHIP.

3 3. THE TERM OF ANY MATERIAL SERVICE PROVIDER CONTRACT WITH THE RISK  
4 RETENTION GROUP MAY NOT EXCEED FIVE YEARS. ANY CONTRACT OR ITS RENEWAL SHALL  
5 REQUIRE THE APPROVAL OF THE MAJORITY OF THE RISK RETENTION GROUP'S  
6 INDEPENDENT BOARD DIRECTORS. THE RISK RETENTION GROUP'S BOARD OF DIRECTORS  
7 SHALL HAVE THE RIGHT TO TERMINATE ANY SERVICE PROVIDER, AUDIT OR ACTUARIAL  
8 CONTRACTS AT ANY TIME FOR CAUSE AFTER PROVIDING ADEQUATE NOTICE AS DEFINED IN  
9 THE CONTRACT. THE SERVICE PROVIDER CONTRACT IS DEEMED MATERIAL IF THE AMOUNT  
10 TO BE PAID FOR THAT CONTRACT IS GREATER THAN OR EQUAL TO FIVE PERCENT OF THE  
11 RISK RETENTION GROUP'S ANNUAL GROSS WRITTEN PREMIUM OR TWO PERCENT OF ITS  
12 SURPLUS, WHICHEVER IS GREATER. A SERVICE PROVIDER CONTRACT THAT IS A  
13 MATERIAL RELATIONSHIP MAY NOT BE ENTERED INTO UNLESS THE RISK RETENTION GROUP  
14 HAS NOTIFIED THE DIRECTOR OF THE DEPARTMENT OF INSURANCE IN WRITING OF ITS  
15 INTENTION TO ENTER INTO THE TRANSACTION AT LEAST THIRTY DAYS BEFORE AND THE  
16 DIRECTOR OF THE DEPARTMENT OF INSURANCE HAS NOT DISAPPROVED THE TRANSACTION  
17 WITHIN THAT PERIOD.

18 4. THE BOARD OF DIRECTORS OF A RISK RETENTION GROUP SHALL ADOPT A  
19 WRITTEN POLICY IN THE PLAN OF OPERATION AS APPROVED BY THE BOARD THAT  
20 REQUIRES THE BOARD OF DIRECTORS TO DO ALL OF THE FOLLOWING:

21 (a) ENSURE THAT ALL OWNERS OR INSURED, OR BOTH, OF THE RISK RETENTION  
22 GROUP RECEIVE EVIDENCE OF OWNERSHIP INTEREST.

23 (b) DEVELOP A SET OF GOVERNANCE STANDARDS APPLICABLE TO THE RISK  
24 RETENTION GROUP.

25 (c) OVERSEE THE EVALUATION OF THE RISK RETENTION GROUP'S MANAGEMENT,  
26 INCLUDING THE PERFORMANCE OF THE CAPTIVE MANAGER, MANAGING GENERAL  
27 UNDERWRITER OR OTHER PARTIES RESPONSIBLE FOR UNDERWRITING, DETERMINATION OF  
28 RATES, COLLECTION OF PREMIUM, ADJUSTING OR SETTLING CLAIMS OR THE PREPARATION  
29 OF FINANCIAL STATEMENTS.

30 (d) REVIEW AND APPROVE THE AMOUNT TO BE PAID FOR ALL MATERIAL SERVICE  
31 PROVIDERS.

32 (e) REVIEW AND APPROVE, AT LEAST ANNUALLY, ALL OF THE FOLLOWING:

33 (i) THE RISK RETENTION GROUP'S GOALS AND OBJECTIVES RELEVANT TO THE  
34 COMPENSATION OF OFFICERS AND SERVICE PROVIDERS.

35 (ii) THE OFFICERS' AND SERVICE PROVIDERS' PERFORMANCE IN LIGHT OF  
36 THOSE GOALS AND OBJECTIVES.

37 (iii) THE CONTINUED ENGAGEMENT OF THE OFFICERS AND MATERIAL SERVICE  
38 PROVIDERS.

39 5. EACH RISK RETENTION GROUP SHALL HAVE AN AUDIT COMMITTEE COMPOSED OF  
40 AT LEAST THREE INDEPENDENT BOARD MEMBERS. A NONINDEPENDENT BOARD MEMBER MAY  
41 PARTICIPATE IN THE ACTIVITIES OF THE AUDIT COMMITTEE, IF INVITED BY THE  
42 MEMBERS, BUT CANNOT BE A MEMBER OF THAT COMMITTEE. THE AUDIT COMMITTEE SHALL  
43 HAVE A WRITTEN CHARTER THAT DEFINES THE COMMITTEE'S PURPOSE, WHICH, AT A  
44 MINIMUM, SHALL BE TO DO ALL OF THE FOLLOWING:

1 (a) ASSIST IN BOARD OVERSIGHT OF THE INTEGRITY OF THE FINANCIAL  
2 STATEMENTS, THE COMPLIANCE WITH LEGAL AND REGULATORY REQUIREMENTS AND THE  
3 QUALIFICATIONS, INDEPENDENCE AND PERFORMANCE OF THE INDEPENDENT AUDITOR AND  
4 ACTUARY.

5 (b) DISCUSS THE ANNUAL AUDITED FINANCIAL STATEMENTS AND QUARTERLY  
6 FINANCIAL STATEMENTS WITH MANAGEMENT.

7 (c) DISCUSS THE ANNUAL AUDITED FINANCIAL STATEMENTS WITH ITS  
8 INDEPENDENT AUDITOR AND, IF ADVISABLE, DISCUSS ITS QUARTERLY FINANCIAL  
9 STATEMENTS WITH ITS INDEPENDENT AUDITOR.

10 (d) DISCUSS POLICIES WITH RESPECT TO RISK ASSESSMENT AND RISK  
11 MANAGEMENT.

12 (e) MEET SEPARATELY AND PERIODICALLY, EITHER DIRECTLY OR THROUGH A  
13 DESIGNATED REPRESENTATIVE OF THE COMMITTEE, WITH MANAGEMENT AND INDEPENDENT  
14 AUDITORS.

15 (f) REVIEW WITH THE INDEPENDENT AUDITOR ANY AUDIT PROBLEMS OR  
16 DIFFICULTIES AND MANAGEMENT'S RESPONSE.

17 (g) SET CLEAR HIRING POLICIES OF THE RISK RETENTION GROUP AS TO THE  
18 HIRING OF EMPLOYEES OR FORMER EMPLOYEES OF THE INDEPENDENT AUDITOR.

19 (h) REQUIRE THE EXTERNAL AUDITOR TO ROTATE THE LEAD OR COORDINATING  
20 AUDIT PARTNER HAVING PRIMARY RESPONSIBILITY FOR THE RISK RETENTION GROUP'S  
21 AUDIT AS WELL AS THE AUDIT PARTNER RESPONSIBLE FOR REVIEWING THAT AUDIT, SO  
22 THAT NEITHER INDIVIDUAL PERFORMS AUDIT SERVICES FOR MORE THAN FIVE  
23 CONSECUTIVE FISCAL YEARS.

24 (i) REPORT REGULARLY TO THE BOARD OF DIRECTORS.

25 6. THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY WAIVE THE  
26 REQUIREMENT TO ESTABLISH AN AUDIT COMMITTEE PURSUANT TO PARAGRAPH 5 OF THIS  
27 SUBSECTION IF THE RISK RETENTION GROUP DEMONSTRATES TO THE DIRECTOR THAT  
28 DOING SO IS IMPRACTICABLE AND THE RISK RETENTION GROUP'S BOARD OF DIRECTORS  
29 IS OTHERWISE ABLE TO FULFILL THE REQUIREMENTS OF THE AUDIT COMMITTEE AS SET  
30 FORTH IN THIS SECTION.

31 7. THE BOARD OF DIRECTORS SHALL ADOPT AND DISCLOSE GOVERNANCE  
32 STANDARDS BY MAKING THE INFORMATION AVAILABLE THROUGH ELECTRONIC MEANS, SUCH  
33 AS POSTING THE INFORMATION ON THE RISK RETENTION GROUP'S WEBSITE, OR OTHER  
34 MEANS, AND PROVIDING THAT INFORMATION TO MEMBERS AND INSURED ON REQUEST. THE  
35 INFORMATION SHALL INCLUDE ALL OF THE FOLLOWING:

36 (a) A PROCESS BY WHICH THE BOARD DIRECTORS ARE ELECTED BY THE OWNERS  
37 OR INSURED, OR BOTH.

38 (b) BOARD DIRECTOR QUALIFICATION STANDARDS.

39 (c) BOARD DIRECTOR RESPONSIBILITIES.

40 (d) BOARD DIRECTOR ACCESS TO MANAGEMENT AND, AS NECESSARY AND  
41 APPROPRIATE, INDEPENDENT ADVISERS.

42 (e) BOARD DIRECTOR COMPENSATION.

43 (f) BOARD DIRECTOR ORIENTATION AND CONTINUING EDUCATION.

44 (g) THE POLICIES AND PROCEDURES THAT ARE FOLLOWED FOR MANAGEMENT  
45 SUCCESSION.

1 (h) THE POLICIES AND PROCEDURES THAT ARE FOLLOWED FOR THE ANNUAL  
2 PERFORMANCE EVALUATION OF THE BOARD.

3 8. THE BOARD OF DIRECTORS SHALL ADOPT AND DISCLOSE A CODE OF BUSINESS  
4 CONDUCT AND ETHICS FOR BOARD DIRECTORS, OFFICERS AND EMPLOYEES AND PROMPTLY  
5 DISCLOSE TO THE BOARD OF DIRECTORS ANY WAIVERS OF THE CODE FOR BOARD  
6 DIRECTORS OR EXECUTIVE OFFICERS, INCLUDING ALL OF THE FOLLOWING TOPICS:

7 (a) CONFLICTS OF INTEREST.

8 (b) MATTERS COVERED UNDER THE CORPORATE OPPORTUNITY DOCTRINE UNDER THE  
9 STATE OF DOMICILE.

10 (c) CONFIDENTIALITY.

11 (d) FAIR DEALING.

12 (e) PROTECTION AND PROPER USE OF RISK RETENTION GROUP ASSETS.

13 (f) COMPLIANCE WITH ALL APPLICABLE LAWS, RULES AND REGULATIONS.

14 (g) REQUIRING THE REPORTING OF ANY ILLEGAL OR UNETHICAL BEHAVIOR THAT  
15 AFFECTS THE OPERATION OF THE RISK RETENTION GROUP.

16 9. THE CAPTIVE MANAGER, PRESIDENT OR CHIEF EXECUTIVE OFFICER OF THE  
17 RISK RETENTION GROUP SHALL PROMPTLY NOTIFY THE DOMESTIC REGULATOR, IN  
18 WRITING, IF EITHER BECOMES AWARE OF ANY MATERIAL NONCOMPLIANCE WITH ANY OF  
19 THE RISK RETENTION GROUP'S GOVERNANCE STANDARDS.

20 D. FOR THE PURPOSES OF THIS SECTION:

21 1. "BOARD DIRECTOR" MEANS A NATURAL PERSON DESIGNATED IN THE ARTICLES  
22 OF THE RISK RETENTION GROUP, OR DESIGNATED, ELECTED OR APPOINTED BY ANY OTHER  
23 MANNER, NAME OR TITLE TO ACT AS A BOARD DIRECTOR.

24 2. "BOARD OF DIRECTORS" OR "BOARD" MEANS THE GOVERNING BODY OF THE  
25 RISK RETENTION GROUP ELECTED BY THE SHAREHOLDERS OR MEMBERS TO ESTABLISH  
26 POLICY, ELECT OR APPOINT OFFICERS AND COMMITTEES AND MAKE OTHER GOVERNING  
27 DECISIONS.

28 3. "MATERIAL RELATIONSHIP" MEANS A PERSON'S RELATIONSHIP WITH THE RISK  
29 RETENTION GROUP, INCLUDING ANY OF THE FOLLOWING:

30 (a) THE RECEIPT IN ANY ONE TWELVE-MONTH PERIOD OF COMPENSATION OR  
31 PAYMENT OF ANY OTHER ITEM OF VALUE BY THAT PERSON, A MEMBER OF THAT PERSON'S  
32 IMMEDIATE FAMILY OR ANY BUSINESS WITH WHICH THAT PERSON IS AFFILIATED FROM  
33 THE RISK RETENTION GROUP OR A CONSULTANT OR SERVICE PROVIDER TO THE RISK  
34 RETENTION GROUP THAT IS GREATER THAN OR EQUAL TO FIVE PERCENT OF THE RISK  
35 RETENTION GROUP'S GROSS WRITTEN PREMIUM FOR THAT TWELVE-MONTH PERIOD OR TWO  
36 PERCENT OF ITS SURPLUS, WHICHEVER IS GREATER, AS MEASURED AT THE END OF ANY  
37 FISCAL QUARTER FALLING IN A TWELVE-MONTH PERIOD. THE PERSON OR IMMEDIATE  
38 FAMILY MEMBER OF THAT PERSON IS NOT INDEPENDENT UNTIL ONE YEAR AFTER THE  
39 PERSON'S COMPENSATION FROM THE RISK RETENTION GROUP FALLS BELOW THE  
40 THRESHOLD.

41 (b) A RELATIONSHIP WITH AN AUDITOR IN WHICH A BOARD DIRECTOR OR AN  
42 IMMEDIATE FAMILY MEMBER OF A BOARD DIRECTOR WHO IS AFFILIATED WITH, OR  
43 EMPLOYED IN, A PROFESSIONAL CAPACITY BY A PRESENT OR FORMER INTERNAL OR  
44 EXTERNAL AUDITOR OF THE RISK RETENTION GROUP IS NOT INDEPENDENT UNTIL ONE  
45 YEAR AFTER THE END OF THE AFFILIATION, EMPLOYMENT OR AUDITING RELATIONSHIP.

1 (c) A RELATIONSHIP WITH A RELATED ENTITY IN WHICH A BOARD DIRECTOR OR  
2 IMMEDIATE FAMILY MEMBER OF A BOARD DIRECTOR WHO IS EMPLOYED AS AN EXECUTIVE  
3 OFFICER OF ANOTHER COMPANY WHERE ANY OF THE RISK RETENTION GROUP'S PRESENT  
4 EXECUTIVES SERVE ON THAT OTHER COMPANY'S BOARD OF DIRECTORS IS NOT  
5 INDEPENDENT UNTIL ONE YEAR AFTER THE END OF THAT SERVICE OR THE EMPLOYMENT  
6 RELATIONSHIP.

7 4. "SERVICE PROVIDERS" INCLUDES CAPTIVE MANAGERS, AUDITORS,  
8 ACCOUNTANTS, ACTUARIES, INVESTMENT ADVISERS, ATTORNEYS AND MANAGING GENERAL  
9 UNDERWRITERS OR ANY OTHER PARTY RESPONSIBLE FOR UNDERWRITING, DETERMINATION  
10 OF RATES, COLLECTION OF PREMIUM, ADJUSTING AND SETTLING CLAIMS OR THE  
11 PREPARATION OF FINANCIAL STATEMENTS. FOR THE PURPOSES OF THIS PARAGRAPH,  
12 ATTORNEY DOES NOT INCLUDE DEFENSE COUNSEL RETAINED BY THE RISK RETENTION  
13 GROUP TO DEFEND CLAIMS, UNLESS THE AMOUNT OF FEES PAID TO THOSE ATTORNEYS  
14 CREATE A MATERIAL RELATIONSHIP.

15 Sec. 2. Title 20, chapter 14, article 1, Arizona Revised Statutes, is  
16 amended by adding section 20-2414, to read:

17 20-2414. Reporting requirement

18 A. BEGINNING ON OR BEFORE DECEMBER 31, 2017, THE DIRECTOR SHALL  
19 ANNUALLY REPORT THE FOLLOWING INFORMATION TO THE PRESIDENT OF THE SENATE AND  
20 THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

21 1. THE NUMBER OF RISK RETENTION GROUPS LICENSED IN THIS STATE SINCE  
22 THE EFFECTIVE DATE OF THIS ACT.

23 2. ANY REGULATORY ACTION TAKEN BY THE DIRECTOR AGAINST A RISK  
24 RETENTION GROUP LICENSED IN THIS STATE FOR NONCOMPLIANCE WITH SECTION  
25 20-2402.

26 3. THE TOTAL NUMBER OF PRIVATE PASSENGER AUTOMOBILE INSURANCE  
27 POLICIES:

28 (a) THAT WERE NONRENEWED DURING THE PREVIOUS CALENDAR YEAR PURSUANT TO  
29 SECTIONS 20-1631 AND 20-1632.

30 (b) IN FORCE IN THIS STATE AS OF THE END OF THE PREVIOUS CALENDAR  
31 YEAR.

32 (c) IN FORCE WITHIN THIS STATE'S AUTOMOBILE ASSIGNED RISK PLAN AS OF  
33 THE END OF THE PREVIOUS CALENDAR YEAR.

34 B. THE DIRECTOR MAY PROVIDE THE REPORT REQUIRED BY SUBSECTION A OF  
35 THIS SECTION IN AN ELECTRONIC FORMAT.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.

Passed the House February 24, 2016

by the following vote: 56 Ayes,

3 Nays, 1 Not Voting

[Signature]  
Speaker of the House

☐ Pro Tempore

[Signature]  
Chief Clerk of the House

Passed the Senate April 13, 2016

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]  
President of the Senate

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

~~This Bill received by the Governor this~~

~~\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Secretary to the Governor~~

~~Approved this \_\_\_\_\_ day of~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Governor of Arizona~~

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

~~This Bill received by the Secretary of State~~

~~this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_~~

~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~

~~\_\_\_\_\_  
Secretary of State~~

H.B. 2553

HOUSE CONCURS IN SENATE  
AMENDMENTS AND FINAL PASSAGE

May 6, 2016,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]  
Speaker of the House

[Signature]  
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

6 day of May, 2016,

at 8:18 o'clock P. M.

[Signature]  
Secretary to the Governor

Approved this 11th day of

May, 2016,

at 9:13 o'clock A. M.

[Signature]  
Governor of Arizona

H.B. 2553

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 12 day of May, 2016,

at 3:14 o'clock P. M.

[Signature]  
Secretary of State